



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 02
26 Federal Plz Ste 3614
New York, NY 10278-3699

Agency Website: www.nlr.gov
Telephone: (212)264-0300
Fax: (212)264-2450

December 18, 2019

David A. Rosenfeld, Attorney at Law
Weinberg, Roger and Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

Re: Barstool Sports, affiliated with The Chernin
Group, LLC
Case 31-CA-246638

Dear Mr. Rosenfeld:

We have carefully investigated and considered your charge that Barstool Sports, Inc. has violated the National Labor Relations Act.

Decision to Approve Settlement Agreement: On December 2, 2019, you were sent a copy of the attached Settlement Agreement and Notice, and you were advised at that time to submit any objections that you had to the proposed Settlement Agreement and Notice. Thereafter, you filed numerous objections to the Settlement Agreement and Notice.

In your first objection, you contend that (b) (6), (b) (7), the main actor alleged in your unfair labor practice charge, should be required to personally sign and email the Settlement Agreement to employees and communicate to the public that (b) (6) has agreed not to violate the Act. You also contend that (b) (6), (b) (7)(C) should personally send out tweets to notify employees about the settlement and to tweet the terms of this Settlement Agreement to employees employed by other employers. I find no merit to these objections since the Employer has agreed to sign and email the Notice to all employees employed by the Employer and to post the Notice at its headquarters and satellite offices. The emailing and posting of the Notice adequately remedy the violations in this case.

In your second objection, you contend that the Employer should personally give the Settlement Agreement to the Charging Party and be required to notify Twitter that the NLRB has required the Employer to remove (b) (6), (b) (7)(C) tweets. The Settlement Agreement provides for the removal of (b) (6), (b) (7)(C) August 13, 2019 tweets which include the alleged unlawful threats. The Employer's agreement to remove these tweets adequately remedies the alleged unfair labor practices herein and thus, the personal delivery of the Agreement is unwarranted.

In your third objection, you requested a non-standard Notice posting period. Your objections did not provide any authority in support of this request. In any event, I find that the standard 60-day Notice posting and the standard remedial language contained in the Notice will adequately remedy the alleged violations in this case.

In your fourth objection, you contend that a formal settlement is required because the Employer's alleged unfair labor practices were in response to the filing of a charge. Pursuant to Section 10164.3 of the Board's Casehandling Manual, a formal settlement agreement is only warranted where there is: 1) a history of unfair labor practices; 2) a likelihood of recurrence or extension of the instant unfair labor practices; 3) continuing violence or a likelihood of recurring violence; or 4) a back pay installment schedule covering an extended period of time. While the Employer entered a settlement agreement in this matter, there is no other recent history of meritorious unfair labor practice charges. Regarding the second factor, there is no evidence that the Employer is likely to engage in conduct similar to the one at issue in the instant charge. Finally, the instant case does not involve any allegations of violence or awards of back pay. In these circumstances, I cannot conclude that a formal settlement agreement is warranted in this matter.

In your fifth and sixth objections, you contend that the Employer should be required to communicate the Notice by tweets, which is the same manner the unlawful conduct was communicated and that if President Trump can use twitter then so should (b) (6), (b) (7)(C). These objections are not supported by any case law and do not appear to be valid objections to the Settlement Agreement. The General Counsel has not required the pinning of Notices in all cases involving Twitter and since the unfair labor practices are not egregious enough to warrant an extraordinary remedy, the Region concluded that the pinning of the Notice was not warranted. The Region determined that the communication of the Notice should be done in the way in which the Employer customarily communicates with its employees. As described above, the posting and emailing of the Notice provide an adequate remedy.

Accordingly, in view of the terms the Charged Party has agreed to in the attached Settlement Agreement, I have determined that it would not effectuate the purposes of the National Labor Relations Act to institute further proceedings at this time. I am, therefore, approving the Settlement Agreement and refusing to issue a complaint in this matter.

Please note that Respondent need not comply with the performance provision of the bilateral Informal Settlement Agreement in related cases 02-CA-246836 and 02-CA-250602 until the review process regarding the objections in 31-CA-246638 is completed.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlrb.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **January 2, 2020**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than January 1, 2020. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

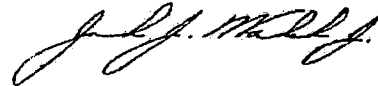
Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before January 2, 2020**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after January 2, 2020, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required

Barstool Sports, affiliated with The Chernin - 4 -
Group, LLC
Case 31-CA-246638

by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J.J. Walsh, Jr.", written in black ink.

John J. Walsh, Jr.
Regional Director

Enclosure

Seth Kaufman, Esq.
Fisher & Phillips, LLP
620 8th Ave Fl 36
New York, NY 10018-1593

Barstool Sports, Inc.
Attn: Dave Portnoy, President
15 West 27th Street, 3rd Floor
New York, NY 10001

Benjamin N. Dictor, Esq.
Eisner & Dictor, P.C.
39 Broadway, Suite 1540
New York City, NY 10006

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF
Barstool Sports, Inc.

Cases 02-CA-246836
02-CA-250602
31-CA-246638

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them where employment notices are customarily posted in the Charged Party's New York headquarters office and its satellite offices in Dallas, Tx; Chicago, IL; Watertown, MA and Los Angeles, CA. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

EMAILING OF NOTICE— A responsible official of the Charged Party will then sign and date those Notices and immediately email copies of the Notice to the known email addresses of all employees employed by the Charged Party as of August 13, 2019. The Charged Party will provide the Regional Director written confirmation of the date of emailing and a list of names and email addresses of employees to whom the Notices were emailed.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION: The signing of this Settlement Agreement does not constitute an admission that the Charged Party violated the National Labor Relations Act

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original

notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

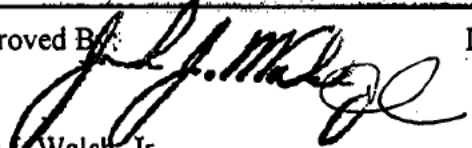
Yes 
Initials

No _____
Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director may issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party Barstool Sports, Inc. (b) (6), (b) (7)(C)	Charging Parties Industrial Workers of the World Freelance Journalists Union/ The Committee to Preserve the Religious Right to Organize
By: _____ Name and Title Date (b) (6), (b) (7)(C)	By: <u>Benjamin N. Dictor</u> Name and Title Date December 10, 2019
Print Name and Title below	Print Name and Title below Benjamin N. Dictor, Counsel Industrial Workers of the World
Recommended By: <u>Ruth Weinreb</u> Ruth Weinreb Senior Field Attorney Date: <u>12/11/19</u>	Approved By: <u></u> John Walsh, Jr. Regional Director, Region 2 Date: <u>12/18/19</u>

(To be printed and posted on official Board notice form)

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT threaten to discharge or sue our employees by tweet or any other manner if they support, seek assistance from or make inquiries about any labor organization.

WE WILL NOT poll our employees through any tweets or any other manner in order to determine their support for any labor organization.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL remove from (b) (6), (b) (7)(C) Twitter Account (b) (6), (b) (7)(C) the two tweets (b) (6) made on August 13, 2019 referencing discharging and suing employees if they support, seek assistance from or make inquiries about any labor organization.

WE WILL remove from our website the video, "(b) (6), (b) (7)(C)" which was posted on August 14, 2019.

WE WILL remove the @BSSUNION Twitter Account.

Barstool Sports, Inc.

(Employer)

Dated: 12/2

By: (b) (6), (b) (7)(C)

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB.

(1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/fly> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

26 Federal Plz Ste. 3614
New York, NY 10278-3699

Telephone: (212)264-0300
Hours of Operation: 8:45 a.m. to 5:15 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.